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Supreme Court, U. S.
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In The

Supreme Court of the United States

OCTOBER TERM, 1976

EDWARD V. REGAN, Individually and as County Executive of Erie County; RAYMOND F. GALLAGHER, as Chairman of the Erie County Legislature; ALFREDA W. SLOMINSKI, as Comptroller of Erie County Department of Social Services; ERIE COUNTY LEGISLATURE; COUNTY OF ERIE; and BARRY VAN LARE,

Appellants,

-against-

PHILIP L. TOIA, Individually and as Commissioner of the New York State Department of Social Services; HUGH L. CAREY, Individually and as Governor of the State of New York; ARTHUR LEVITT, Individually and as Comptroller of the State of New York; JAMES H. TULLY, JR., Individually and as Commissioner of Taxation and Finance of the State of New York; PETER GOLDMARK, Individually and as Director of the Budget of the State of New York; THE NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; and PEOPLE OF THE STATE OF NEW YORK,

Appellees.

On Appeal from the Court of Appeals of New York

MOTION TO DISMISS OR AFFIRM

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STATEMENT

The appellees move the Court to dismiss the appeal herein or, in the alternative, to affirm the order of the New York Court of Appeals which upheld the validity of the provisions of the New York Social Services Law requiring local social services districts to provide 50% of the non-federal share of welfare funds.

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QUESTION PRESENTED

Was the highest Court of the State of New York, the Court of Appeals, and the State's intermediate Appellate Court, the Appellate Division, Fourth Judicial Department, correct in holding that the provisions of the New York Social Services Law requiring Erie County, a County of the State, to provide 50% of the non-federal funding of welfare programs in the County violate neither the due process nor equal protection clauses of the United States Constitution?

The Court of Appeals held that: "As to the claimed invalidity under the Federal Constitution, the decision in *Lindsay* v. *Wyman* (372 F. Supp. 1360, affd. sub. nom. *Beame* v. *Lavine*, 419 US 406), . . . conclusively negates the Erie County position."

NATURE OF THE CASE

Appellants are officials of the County of Erie and the County of Erie in New York State. Pursuant to the provisions of the New York Social Services Law (App. Appendix 49a), each local social services district is required to provide assistance and care to those persons residing or found in the district and in need of such care. The welfare programs (App. Appendix 52a-58a) in issue in this action are Home Relief, which is funded 50% by local funds and 50% by State funds and Aid to Dependent Children, Medical Assistance and Day Care which are funded 50% by federal funds, 25% state funds and 25% local funds. In a proceeding commenced by appellee Commissioner of the New York State Department of Social Services to enforce appellants' statutory duty to provide the local share of welfare funds, appellants challenged by counterclaim this statutory funding plan as being, *inter alia*, denial of equal protection and due process guaranteed by the United States Constitution. Appellants' challenge to these funding statutes contends that they put an unequal and discriminatory burden on poorer counties. The Court of original instance found that appellants had failed to carry their burden of proof on the questions of constitutionality and validity of the Social Services Law (App. Appendix 37a). Nevertheless, the Court went on to discuss the issue of constitutionality and concluded that the provisions of the Social Services Law were valid (App. Appendix 43a).

On appeal, the Appellate Division of the New York Supreme Court, Fourth Judicial Department, reviewed the applicable federal law and determined that the statutory funding plan was valid in view of the traditional local responsibility on counties to provide assistance and care and the compelling incentive to counties to efficiently administer the welfare programs and prevent abuses. The New York State Court of Appeals affirmed on the opinion of the Appellate Division and the additional note that the applicable federal caselaw conclusively negated Erie County's challenge (App. Appendix 6a and 7a).

ARGUMENT

THE NEW YORK STATE COURTS CORRECTLY UPHELD THE VALIDITY OF THE PROVISIONS OF THE NEW YORK SOCIAL SERVICES LAW REQUIRING COUNTIES OF THE STATE, OF WHICH ERIE COUNTY IS ONE, TO PROVIDE 50% OF THE NON-FEDERAL FUNDING OF WELFARE PROGRAMS IN THE COUNTY.

At the outset, it is noted that appellants, Erie County and the Erie County Legislature, as municipalities, lack standing to maintain this appeal. *Williams v. Mayor and City Council of Baltimore*, 289 U.S. 36 (1933); *City of New York* v. *Richardson*, 473 F. 2d 923 (2d Cir., 1973), cert. den. 412 U.S. 950. This lack of standing also exists with regard to the individual appellants. Schlesinger v. *Reservists to Stop the War*, 418 U.S. 208 (1974); *Sierra Club* v. *Morton*, 405 U.S. 727 (1972); *Baker* v. *Carr*, 369 U.S. 186, 204 (1962).

Moreover, since a substantial federal constitutional question is not presented by this appeal, it must be dismissed. The New York Courts relied on the decision of the three-judge federal court in *Lindsay* v. *Wyman*, 372 F. Supp. 1360, affd. *sub nom Beame* v. *Lavine*, 419 U.S. 806 (1974). In the *Lindsay* case, New York City argued, as has Erie County in the State Courts and as it argues here, that the welfare funding statutes of the State placed an unequal discriminatory burden on the Social Services districts. The three-judge District Court in *Lindsay* rejected this contention and upheld the validity of the statutory provisions. This Court affirmed that decision *sub. nom. Beame* v. *Lavine*, 419 U.S. 806 (1974). See also *Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970).

Appellants seek to distinguish the *Lindsay* decision by arguing that Erie County's fiscal situation is substantially different from that of New York City. Appellants argue that New York City has greater resources than does Erie County. Appellants fail, however, to point out that New York City also has greater obligations than Erie County.

It is clear then that this Court in affirming *Lindsay* under the name *Beame* v. *Lavine*, 419 U.S. 806 (1974) has already passed on the question, on which appellants seek review.

CONCLUSION

THE APPEAL SHOULD BE DISMISSED OR, IN THE ALTERNATIVE, THE ORDER OF THE NEW YORK COURT OF APPEALS SHOULD BE AFFIRMED.

Dated: January 10, 1976

Respectfully submitted,

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